

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Burton Hagwood, # 03671-087,)	C/A No. 8:04-1871-CMC-BHH
)	
Plaintiff,)	
)	
v.)	OPINION AND ORDER
)	
Department of Justice, et al.,)	
)	
Defendants.)	
)	

Plaintiff is a *pro se* federal prisoner currently housed at Gilmer Federal Correctional Institution at Glenville, West Virginia. Plaintiff originally brought this action in the United States District Court for the District of Columbia. By order of that court dated April 13, 2004, the action was transferred to the District of South Carolina. Plaintiff at that time was housed in FCI Edgefield, South Carolina. Plaintiff filed this action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (cause of action under the Constitution of the United States against federal officials for the violation of federal constitutional rights). Following his original complaint filed March 12, 2003, Plaintiff filed five amended complaints alleging various causes of action against different Defendants. Because of the confusion as to what claims were still at issue and what defendants were still parties in the case, Plaintiff, by order of the court, was directed to file an amended complaint that would replace all previous complaints. Plaintiff filed documents on November 22, 2004, and on December 1, 2004, which the court construed to be Plaintiff's amended complaint. He subsequently filed a "supplemental complaint" in which he named three additional defendants. Defendants objected to the filing of the supplemental complaint and the court agreed and denied Plaintiff's request to file a supplemental complaint. Plaintiff filed

a motion for summary judgment for which there is no proof of service in the record.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(b), (d), and (e), DSC, this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pre-trial proceedings and a Report and Recommendation on any pending dispositive matters.

The Magistrate Judge has filed two Reports and Recommendations in this case—the first on May 26, 2005, and the second on June 3, 2005. In the first Report, the Magistrate Judge recommended that Plaintiff's motion for summary judgment be *denied*. In the second Report, the Magistrate Judge recommended that the action against Defendant B. Henderson be *dismissed without prejudice* pursuant to Federal Rule of Civil Procedure 4(I), (m).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Reports and Recommendations and the serious consequences if he failed to do so. Plaintiff filed his objections on June 10, 2005.

The court has carefully reviewed Plaintiff's response to the Reports and Recommendations and has concluded that Plaintiff's objections lack merit. After considering the motion, the

objections, the record of this matter, the applicable law, and the Reports and Recommendations of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Reports and Recommendations by reference in this Order.

IT IS THEREFORE ORDERED that Plaintiff's motion for summary judgment is *denied*; and it is

FURTHER ORDERED that this action is *dismissed without prejudice* with regard to Defendant B. Henderson, pursuant to Federal Rule of Civil Procedure 4(1), (m).

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 1, 2005

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